



Senate

General Assembly

File No. 66

February Session, 2008

Substitute Senate Bill No. 183

Senate, March 20, 2008

The Committee on Banks reported through SEN. DUFF of the 25th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING SURETY BONDS FOR DEBT ADJUSTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-664 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2008*):

3 (a) (1) Except as provided in subdivision (2) of this subsection, no
4 such license, and no renewal thereof, shall be granted unless the
5 applicant has filed a surety bond with the commissioner written by a
6 surety authorized to write such bonds in this state, provided any
7 applicant that files applications for licenses for more than one location
8 shall file a single bond. [For] Except as provided in this subdivision,
9 for every applicant, the principal amount of the bond shall be the
10 greater of (A) forty thousand dollars, or (B) twice the amount of the
11 [highest total] average daily balance of the payments received by the
12 applicant from Connecticut debtors in connection with the applicant's
13 debt adjustment activity [in any month] during the preceding twelve
14 months ending July thirty-first of each year and, in the case of an
15 applicant that has acquired the business of a predecessor debt adjuster,

16 the predecessor's debt adjustment activity during such preceding
17 period, not to exceed one million dollars. The commissioner may
18 require a larger bond if the commissioner determines that a licensee
19 has engaged in a pattern of conduct resulting in bona fide consumer
20 complaints of misconduct and that such increased bond is necessary
21 for the protection of consumers, or may increase or decrease the
22 amount of the bond based upon the applicant's or licensee's financial
23 condition, business plan and the actual or estimated aggregate amount
24 of payments and fees paid by Connecticut debtors to such applicant.
25 Each licensee shall submit to the commissioner, [evidence that the
26 bond complies with the provisions of this subdivision] by September
27 first of each year, a report containing information on the average daily
28 balance of the payments received by the licensee from Connecticut
29 debtors during the preceding twelve months ending July thirty-first of
30 each such year. The report shall be subscribed and affirmed as true by
31 the licensee and shall be in a form prescribed by the commissioner.

32 (2) If a licensee or applicant for renewal of a license establishes that
33 such licensee or applicant is unable to comply with the bond required
34 by subdivision (1) of this subsection, it [may submit to the
35 commissioner, by July first, a request for an alternative to such
36 requirement. If the commissioner finds that the financial responsibility,
37 character, reputation, integrity and general fitness of the applicant so
38 warrant, the commissioner may permit the applicant or licensee to
39 supplement the maximum surety bond that] shall file a bond for the
40 highest principal amount it can obtain, provided [the principal amount
41 of the surety bond] such amount shall be a minimum of forty thousand
42 dollars, [with such other bonds or insurance policies, in such amounts,
43 for such period and subject to such conditions as the commissioner
44 may approve. Any such bond or insurance policy shall be written or
45 issued by a surety or insurance company authorized to write such
46 bonds or sell such insurance in this state] and the licensee or applicant
47 for renewal shall, in lieu of the balance of the required amount of the
48 bond, deposit a sum equal to the amount of the bond required by
49 subdivision (1) of this subsection, less the amount of the bond filed
50 with the commissioner, in cash or cash equivalents, with such bank,

51 out-of-state bank that has a branch in this state, Connecticut credit
52 union or federal credit union as such applicant or licensee may
53 designate and the commissioner may approve, and subject to such
54 conditions as the commissioner deems necessary for the protection of
55 consumers and in the public interest. No applicant or licensee shall
56 make such deposit until the depository institution and the applicant or
57 licensee executes a deposit agreement satisfactory to the commissioner.
58 The deposit agreement shall pledge the amount deposited to the
59 commissioner and provide that the depository institution shall not
60 release any of the moneys pledged without the authorization of the
61 commissioner. The amount deposited shall secure the same obligation
62 as would a surety bond filed under this section and shall be held at
63 such banks or credit unions to cover claims during the period the
64 license remains in full force and effect and the succeeding two years
65 after such license has been surrendered, revoked or suspended or has
66 expired. The applicant or licensee may collect interest on such deposit
67 in accordance with its deposit agreement. The deposits made pursuant
68 to this section shall be deemed, by operation of law, to be held in trust
69 for the benefit of any debtor, who may be damaged by failure of an
70 applicant or licensee to perform any written agreements or by the
71 wrongful conversion of funds paid to a licensee in the event of the
72 bankruptcy of the licensee, and shall be immune from attachment by
73 creditors or judgment creditors.

74 (3) The form of any surety bond submitted pursuant to this section
75 shall be approved by the Attorney General. Any surety bond filed
76 under this section shall be conditioned upon the licensee faithfully
77 performing any and all written agreements with debtors, truly and
78 faithfully accounting for all funds received by the licensee in the
79 licensee's capacity as a debt adjuster, and conducting such business
80 consistent with the provisions of sections 36a-655 to 36a-665, inclusive.
81 Any debtor who may be damaged by failure to perform any written
82 agreements, or by the wrongful conversion of funds paid to a licensee,
83 may proceed on any such surety bond against the principal or surety
84 thereon, or both, to recover damages. The commissioner may proceed
85 on any such surety bond against the principal or surety thereon, or

86 both, to collect any civil penalty imposed upon the licensee pursuant to
 87 subsection (a) of section 36a-50. The proceeds of any bond, [or
 88 insurance policy,] even if commingled with other assets of the licensee,
 89 shall be deemed by operation of law to be held in trust for the benefit
 90 of such claimants against the licensee in the event of bankruptcy of the
 91 licensee and shall be immune from attachment by creditors and
 92 judgment creditors. Any bond [or insurance policy] required by this
 93 section shall be maintained during the entire period of the license
 94 granted to the applicant, and the aggregate liability under any such
 95 bond [or insurance policy] shall not exceed the principal amount of the
 96 bond or the limit of liability. [of the insurance policy.]

97 (b) The surety [or insurance] company shall have the right to cancel
 98 any bond [or insurance policy written or issued] filed under subsection
 99 (a) of this section at any time by a written notice to the licensee, stating
 100 the date cancellation shall take effect. Such notice shall be sent by
 101 certified mail to the licensee at least thirty days prior to the date of
 102 cancellation. No such bond shall be cancelled unless the surety [or
 103 insurance] company notifies the commissioner in writing not less than
 104 thirty days prior to the effective date of cancellation. The commissioner
 105 shall automatically suspend the license on the date the cancellation
 106 takes effect, unless the bond [or insurance policy] has been replaced or
 107 renewed. The commissioner shall give the licensee notice of the
 108 automatic suspension pending proceedings for revocation or refusal to
 109 renew and an opportunity for a hearing on such actions in accordance
 110 with section 36a-51 of the 2008 supplement to the general statutes.

111 (c) No licensee shall use, attempt to use or make reference to, either
 112 directly or indirectly, any word or phrase which states or implies that
 113 the licensee is endorsed, sponsored, recommended [,] or bonded [or
 114 insured] by the state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2008	36a-664

Statement of Legislative Commissioners:

In the first sentence of section 1(b), the closing bracket was moved to retain the word "company" for internal consistency in the subsection.

BA *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 183*****AN ACT CONCERNING SURETY BONDS FOR DEBT ADJUSTERS.*****SUMMARY:**

This bill changes the method for calculating the required surety bond that must be filed by debt adjusters. It also sets the bond for a debt adjuster applicant who acquires the debt adjuster business of a predecessor. The bill (1) gives the banking commissioner authority to change the bond amount based on certain conditions and (2) requires applicants who cannot meet the bond requirements to deposit a certain amount in a bank, instead of obtaining an insurance policy as is the option under current law. It also makes conforming changes.

EFFECTIVE DATE: July 1, 2008

CALCULATING THE REQUIRED BOND

Current law sets the bond amount for debt adjuster license applicants at the greater of (1) \$40,000 or (2) twice the amount of the highest total payments received from Connecticut debtors in connection with the applicant's debt adjustment activity in any month during the preceding 12 months ending on July 31 of each year. The bill requires the average daily balance over the preceding 12 months to be used instead of the highest total in any month. It limits the bond for applicants that have acquired the business of a predecessor debt adjuster to \$ 1 million, using the same calculation.

The bill allows the banking commissioner to require a larger bond if he determines that (1) a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct and (2) the increased bond is necessary for consumer protection. The bill also allows the commissioner to change the bond amount based on the

applicant's or licensee's financial condition, business plan, or the amount of payments and fees paid by Connecticut debtors to the applicant. Current law requires licensees to submit evidence that the bond complies with the statutory requirements by September 1 of each year. The bill requires licensees to submit a report specifically containing information on the average daily balance of payments received from Connecticut debtors during the preceding 12 months ending July 31. It must be subscribed and affirmed by the licensee in a form the commissioner prescribes.

LICENSEES AND APPLICANTS UNABLE TO MEET THE BOND REQUIREMENTS

Under current law, when a licensee or renewal applicant cannot comply with the bond requirements, the person can submit a request for an alternative to the commissioner by July 1. If the commissioner determines it is warranted, he can allow the applicant or licensee to supplement the maximum bond, as long as it is at least \$40,000, with other bonds and insurance policies, with the details approved by the commissioner. The bill instead requires a licensee or applicant in this situation to file the highest bond it can get, as long as it is at least \$40,000. In lieu of the balance, the licensee or applicant must deposit an amount equal to what it was required to pay, minus the \$40,000 or more in cash or cash equivalents with a commissioner-approved Connecticut bank, out-of-state bank with a Connecticut branch, or Connecticut or federal credit union. The commissioner may impose other conditions he deems necessary for consumer protection and the public interest.

The bill prohibits such deposits from being made until the institution and licensee execute a depository agreement that the commissioner finds satisfactory. The agreement must pledge the deposited funds to the commissioner and prohibit the institution from releasing any of the pledged funds without the commissioner's authorization. The bill specifies that the deposited amount secures the same obligations as would the surety bond and that it is to be held at the institution to cover claims during the license period and for two

years after the license is surrendered, revoked, suspended, or expired. The applicant or licensee may, however, collect interest on the deposit in accordance with the agreement.

The bill deems the deposits, by operation of law, to be held in trust for the benefit of a debtor who is damaged by (1) the applicant's or licensee's failure to perform a written agreement or (2) the wrongful conversion of funds paid to a licensee in the event of the licensee's bankruptcy. The funds are immune from attachment by creditors or judgment creditors.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/04/2008)